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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

WILLIAM MCKINNEY,

Plaintiff,

vs.

BAYER HEALTHCARE LLC; BAYER
HEALTHCARE PHARMACEUTICALS, INC.;
and DOES 1-20,

Defendants.

Case No. CV 09 5561 CW

**STIPULATION AND ~~PROPOSED~~
ORDER RE: DISMISSAL WITH
PREJUDICE OF PLAINTIFF'S
SEVENTH CAUSE OF ACTION**

The parties, plaintiff William McKinney ("plaintiff") and defendants Bayer HealthCare LLC (Bayer) and Bayer HealthCare Pharmaceuticals Inc. (collectively, "defendants"),¹ by and through their undersigned counsel, hereby stipulate as follows:

¹ Defendants' position is that Bayer HealthCare Pharmaceuticals Inc. is not a proper party to these proceedings as it never employed plaintiff, or had any involvement in the facts which allegedly gave rise to this action.

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1 1. Plaintiff's seventh cause of action is pled as one for Intentional Infliction of
2 Emotional Distress;

3 2. Bayer had previously propounded Request for Production Nos. 11, 14, 23, 24 and
4 Special Interrogatories Nos. 17-20, which were aimed at adducing evidence relative to plaintiff's
5 seventh cause of action;

6 3. Plaintiff has agreed that he shall seek to recover in this action only so-called
7 "garden variety" emotional distress damages (*see Turner v. Imperial Stores*, 161 F.R.D. 89 (S.D.
8 Cal. 1995)), dismiss, with prejudice, his seventh cause of action, and offer no expert witness
9 testimony (including by treating physicians) that any medical/psychological/emotional condition
10 of plaintiff's was caused by or exacerbated by defendants' conduct; and

11 4. Bayer shall, accordingly, withdraw Request for Production Nos. 11, 14, 23, 24,
12 Special Interrogatories Nos. 17-20, and Request for Productions Nos. 11, 14, 23, 24 in regards to
13 its Amended Notice of Deposition of Plaintiff.

14 IT IS SO AGREED:

15
16 Dated: October 21, 2010

17 LAW OFFICE OF JEROME SCHREIBSTEIN

18 By /s/
19 Jerome Schreibstein
20 Attorneys for Defendant s BAYER
21 HEALTHCARE LLC and BAYER
22 HEALTHCARE PHARMACEUTICALS
23 INC.

24
25 Dated: October 21, 2010

26 LAW OFFICES OF JEREMY PASTERNAK


27 By /s/
28 Jeremy Pasternak
 Anthony Oceguera
 Attorneys for Plaintiff
 WILLIAM MCKINNEY

ORDER

Based upon the above Stipulation of the parties and good cause otherwise appearing, this Court hereby dismiss, with prejudice, plaintiff's seventh cause of action for Intentional Infliction of Emotional Distress. The Court further orders that plaintiff shall be permitted to seek at trial only so-called "garden variety" emotional distress damages (*see Turner v. Imperial Stores*, 161 F.R.D. 89 (S.D. Cal. 1995)) and may offer no expert witness testimony (including by treating physicians) that any medical/psychological/emotional condition of plaintiff's was caused by or exacerbated by defendants' conduct. The Court further orders that defendants Bayer HealthCare LLC shall withdraw Request for Production Nos. 11, 14, 23, 24, Special Interrogatories Nos. 17-20, and Request for Productions Nos. 11, 14, 23, 24 in regards to its Amended Notice of Deposition of Plaintiff..

IT IS ORDERED.

Dated: October 25, 2010

By 
Claudia Wilken
United States District Court Judge

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